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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,319	07/10/2003	Kevin P. Klubek	85143RLO	2823

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Thomas H. Close
Patent Legal Staff
Eastman Kodak Company
343 State Street
Rochester, NY 14650-2201

EXAMINER

GARRETT, DAWN L

ART UNIT

PAPER NUMBER

1774

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application N . 10/617,319	Applicant(s) KLUBEK ET AL.	
	Examiner Dawn Garrett	Art Unit 1774	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-10 and 18-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25-32 and 41-48 is/are allowed.
- 6) ☒ Claim(s) 2, 18, 19 and 33-40 is/are rejected.
- 7) ☒ Claim(s) 3-10 and 20-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. This Office action is responsive to the amendment dated November 1, 2004. Claims 1 and 11-17 are cancelled. Claims 2-10 and 18-48 are pending.
2. The rejection of claims 2, 19, and 20-24 are rejected under 35 USC 102(a) as being anticipated by Wang et al., Chemical Materials, (2003), Vol. 15, pages 1913-1917, is withdrawn due to applicant's persuasive arguments.
3. The rejection of claims 2 and 18-24 under 35 USC 103(a) as being unpatentable over Onikubo et al. (JP 10-251633) is withdrawn due to applicant's persuasive arguments.
4. The double patenting rejection set forth in the last Office action (mailed September 29, 2004), paragraph 13, is withdrawn due to the terminal disclaimer filed on November 1, 2004.

Terminal Disclaimer

5. The terminal disclaimer filed on November 1, 2004 disclaiming the terminal portion of any patent granted on this application, which would extend beyond the expiration date of U.S. Patent Application Number 10/390,973 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
7. Claims 33-40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The formula in claim 33 is described as a dihydrophenazine; however, the

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formula appears to represent a phenazine instead. In addition, the dependent claims 34-40 refer to a dihydrophenazine rather than a phenazine. Clarification and/or correction are required.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 2, 18, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Eguchi et al. (JP 61-043689). Eguchi et al. discloses a luminescent element comprising a dihydrophenazine derivative (see abstract and the following pages of the translation: page 6, formula at top of page 8, and compound E in Working Example on page 21). The device comprises three luminescent layers and the dihydrophenazine compound may be in any one of the three layers per instant claims 18 and 19 (see abstract).

Allowable Subject Matter

10. Claims 25-32 and 41-48 are allowed. Claims 3-10 and 20-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Reasons for the indication of allowable subject matter were previously given in the previous Office actions.

Response to Arguments

11. Applicant's arguments with respect to claims 2-10 and 18-48 have been considered but are moot in view of the new ground(s) of rejection.


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Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dawn Garrett whose telephone number is (571)272-1523. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571) 272-3186. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Dawn Garrett
Primary Examiner
Art Unit 1774

D.G.
January 10, 2005